Central Law Journal.

ST. LOUIS, MO., May 26, 1911.

A CORRECTION.

In 72 Cent. L. J. 354, we refer to the case of Kiernan v. City of Portland, 112 Pac. 402, under the title of Kieman v. City of Portland. The error occurred from our using the pamphlet copy of the Kiernan case, published by the Senate of the United States and sent us by Senator Bourne's secretary, to accompany the publication of his article on Popular v. Delegated Government.

THE DOCTRINE THAT THE ANTI-TRUST ACT REFERS ONLY TO UNREASONABLE RESTRAINTS OF TRADE.

It is too large a task and one which at the end would merely display theorizing as to a question which appears by the Standard Oil decision to be settled, to argue whether that settlement is sound or not. It seems certain, however, that the view has been prevalent, that the anti-trust act was to be administered upon the theory that every restraint that came within its comprehensive language was an "unlawful restraint." Wherein the law may have heretofore been claimed to interfere with the freedom of contract, it was said by Justice Peckham, in the Trans-Missouri freight association case, that that freedom is controlled by the governmental power regulating that which is the subject of contract.

We abandon now the old idea, whose influence has permeated, or has been the undercurrent in, every deliverance respecting the enforcement of the anti-trust act. Henceforth judges must administer that law differently, or so it seems to us.

We have seen in decision, and may still see, state legislation, which incidentally affects interstate commerce, recognized as valid, merely because Congress has not covered the ground the legislation covers. And now we see an era beginning when incidental restraint of trade is not to be considered, because the anti-trust act, as now construed, has not covered that ground.

We are obliged to regard the national law as supreme in this as in other subjects where it is constitutional, but we see a parallelism between state legislation and restraints in their relation to interstate commerce, which the now abandoned construction did not admit. Interstate commerce is not something that nothing but Congress by legislation may affect. The interstate commerce clause is not self-enforcing. The commerce is that of the country as a unit. The states of that country are to make use of it for its citizens and the states may legislate so as to affect it, provided the legislation does not substantially obstruct it. Individuals may have their trade arrangements possibly even to directly affect it, provided these do not unreasonably affect it.

It may be that the identical rule may be applied to state legislation and private contracts. Congress seems nothing more than the custodian of the interests of interstate state commerce and as to it, its duty lies in the Ciceronian maxim, *ne quid respublica detrimenti caperet*—that the republic shall suffer no loss.

Courts, we believe, have sometimes anticipated the congressional function, while, if Congress is the only sentinel on the watchtower of interstate commerce, there ought to be considered nothing inimical to its interests except what that sentinel specifically condemns.

Now that under the new construction, and we think it not out of the way to call it new under the admission in the opinion by the Chief Justice—the quality and the description of an act are not the sole tests of a violation of law, the spirit of the law must run through every judicial proceeding differently than it ran before. Even technically in pleading a different manner of averment would seem to be necessary.

Take, for example, an indictment. If the anti-trust act were aimed at every unlawful restraint of trade, whether reasonable or unreasonable, the usual form of allegation would suffice—state the act charged and allege it, in its nakedness, as contrary to the form of the statute, etc. But, if being contrary to that form may, or not constitute an offense, it would seem necessary to add that it did then and there unreasonably restrain trade, and the burden would be upon the government to show, not that this was its natural or probable effect, but its actual effect.

Pursuing this thought one step further, it may be asked would it be a question for the court or for the jury whether the act charged had such effect? If the latter, would any court be able to say that on the face of an indictment a crime was charged, with the certainty that the law requires?

Intent even would be a different kind of factor in a prosecution under the new than under the old construction. The intent to interfere with interstate commerce is not a penal offense under the new construction—though it was under the old. But the only unlawful intent is to make that interference an unlawful restraint—that is to say, an unreasonable restraint. Every accused might honestly say I wanted business, but I did not foresee that the consequence of my getting it would operate as an unreasonable restraint of trade.

So as to every combination, which at the beginning is within the pale of law because it is a mere ripple on the surface of trade, only becomes illegal when the winds of prosperity swell that ripple into engulfing waves.

Let us admit that the sentinel on the watchtower of commerce has the right to tell the combination to allay the tempest it has raised, would it wish to do more than that? Or, at least, has it said it would?

This brings us to the question of dissolution under the decree. Outside of the effect that the new interpretation of the anti-trust act may have on that, it seems pure *dictum*. The affirmed decision held that there was a trust in violation of the Sherman act. Under its view it was a trust, because it was an unlawful combination, and because that act denounced all combinations in their form unlawful. The affirming decisions says in effect it is unlawful because it unreasonably restrains trade.

Arrangements to comply with the decree by the lower court would be to destroy root and branch every vestige of the condemned combination. But as the affirming decision says, in effect, that all the law requires is for the combination to bring itself within bounds where there will be no unreasonable restraint of trade, why may not the defendants be treated less harshly under the affirming decision than under that that was affirmed? The law, says the Chief Justice, should be read "under the light of reason." Why also should not this decree?

But suppose as the terms of the decree modified only in one particular, it is to be taken that the Supreme Court meant that in every other respect it is to be literally enforced. Then when formal compliance has occurred, what may prevent a new arrangement in combination that may come within the reason of the law? Though there has been a judgment against these defendants, they still are permitted to do what is lawful for any other combination to do.

It seems, that it is pretty nearly held that it is the bigness of a combination and not its form, that the anti-trust act condemns.

NOTES OF IMPORTANT DECISIONS

INTERSTATE COMMERCE—THE RIGHT OF A CARRIER TO INQUIRE FOR RATE MAKING PURPOSES INTO THE OWNERSHIP OF A SHIPMENT.—The question above suggested was held by a recent decision of the supreme court to be involved in the case of Interstate Commerce Commission v. Delaware, L. & W. R. Co., 31 Sup. Ct. 392.

The facts which brought such a question up for decision are somewhat interesting. Out of the concession, if it may be so termed, given by railroad classification, of a smaller rate for carload lots than for less than carload shipments the business of the forwarding agent came into existence. That business is thus

described in the opinion in the case: "The business of the forwarding agent in so far as is material to the question involved, is to collect less-than-carload shipments from different consignors, combine such shipments into carloads, and ship the same in the name of the forwarding agent, or of the owner of one of the less-than-carload shipments, to one consignee, who may be the forwarding agent himself, another forwarding agent at the point of destination with whom he has business relations, or the owner of part of the property transported. The consignee of the shipment, whoever he may be, receives the carload and distributes its contents to the parties for whom they are intended. The forwarding agent finds his compensation and profit in the difference between the carload and less-than-carload rates."

It is also pointed out that the agent is able to secure contributions to a carload by dividing his profits with the contributors.

These differing rates seem to have presented such a margin as to have made the business of the forwarding agent quite attractive and, therefore, extensive. The carriers came to regard forwarding agents more as competitors than allies in transportation, and it would seem true that one of these doing a successful business could wield a considerable influence in shaping transportation, that is to say, in the exercise of a discretion in using cars with a minimum as to what constitutes a carload shipment. We believe there is such a minimum and naturally the forwarding agent might wish to avail himself of it, while the carrier might wish the maximum, if he is to combine the shipments. This point, however, is not discussed.

To eliminate, as far as possible the forwarding agent, and enable the railroad to do its own combining of less-than-carload shipments, while receiving higher rates therefor, rules were made to the effect, that shipment should be made by the real owner, for which there should be separate billing, etc.

By a majority of three out of five the Commerce Commission held that these rules were not enforceable, and a circuit court at the instance of the railroad enjoined the commission's order. From the court's decree appeal was taken to the Supreme Court.

The Chief Justice thought that an adverse ruling upon the right of the carrier to make ownership of freight a test of the right to ship made unnecessary any inquiry into any other question, and denied that the concession in favor of carload rates could preclude inquiry into the merits of such question.

The railroad contended that its voluntary act in making a difference in rates gave it the right to attach conditions to its being taken advantage of, and that even if one offering freight in less-than-carload lots could not be asked whose it was, yet if he were combining with another to get something, he would not be otherwise entitled to, the railroad could prevent the success of this attempt.

This position seems to us to have much of force in it. The Chief Justice says: "This proposition rests on the fallacious assumption that because a carrier has the authority to fix rates, it has the right to discriminate as to those who shall be entitled to avail of them." It seems to us that the situation might be thus summarized: The proposition rests on the assumption that because the carrier has the authority to fix rates, it has the incidental right to prevent any evasion of this right, by a factitious appearance of things growing out of the exercise of its authority. It does not seem unwholesome doctrine to deny that a mere claim of right should not be allowed when it is based upon a fugitive condition to continue only while freight is being transported and then to dissolve into thin air. There may be a technical title in the forwarding agent, but it is created purely as against a third party, and the lack of fair play in such a transaction should not attract to it any intendment. It looks like this decision builds upon the duty of the carrier to carry for the public a right in favor of a class of business it ought not to enjoy.

EMINENT DOMAIN—RIGHT OF GOVERNMENT TO JUDGMENT IN CONDEMNATION PROCEEDINGS FOR A POST-OFFICE SITE WHERE DEFICIENCY IN APPROPRIATION FOR A SITE IS MADE UP BY PRIVATE DONATION.—It appears that Congress authorized the Secretary of the Treasury to acquire a suitable site for a post-office in Greeley, Colo., within the limits of $10,000. What was deemed a suitable site was held by the award in condemnation to be worth $32,000.

Before the site was selected certain citizens, interested in this location for a post office, agreed to make up whatever deficiency was required.

The owner of the property claimed it was "against public policy for private citizens to make donations under such circumstances and that they did so, invalidated the proceedings of the Government." Currier v. United States, 184 Fed. 700.

The Circuit Court of Appeals for Eighth Circuit held that there being no charge of the re-

ceipt of a personal consideration by any officer of the Government, "the action of the Secretary was wholly free from any influence, save his judgment of the suitableness of the location and the donations towards its cost. Those donations were to the Government, the public itself, not to an official, and we perceive nothing in them that would tend to public detriment."

It does not appear that objection was made that the right of condemnation under authority of Congress was confined to taking property not worth more than $15,000, and discussion goes purely upon whether the Government could "avail itself of the opportunity" to get $32,000 worth of property for $15,000. The opinion says: "The right of the complaining parties, which was accorded, was that their property should not be taken, except for a public use, and that they be paid just compensation." We do not think this is an altogether accurate statement. It should specify that it should be taken for an authorized public use. Congress does not seem to have authorized the Secretary to take property by condemnation which was to cost more than $15,000. Thereby it told the Secretary that for any property worth more than $15,000 there was no authority to condemn. But this limitation on authority is avoided by private citizens who induce the Secretary to look for sites which would, but for their intervention, be absolutely exempt from condemnation.

It is not the theory of law, that an award in condemnation is absolutely as satisfactory to an owner of property as sale by private contract, but the right of condemnation is a burden which the citizen bears in favor of his government. The exercise of that right ought to be wholly free from any influence on the part of any individual, because the right is a governmental right.

The method of valuation might be wholly inadequate in the mind of an owner, whose property is to be taken and he ought not to be compelled to accept it when ulterior aims on the part of individuals, for which they pay, are to be subserved.

It may be true, that in the case of this condemsation no fraud was alleged or sinister influence suggested, but there was interference for a consideration enuring to the government, which made it take property otherwise exempt from an adversary proceeding under governmental power.

IS THE REFERENDUM ANTI-REPUBLICAN?

To answer the question here propounded it is necessary to construe the language used in the Federal Constitution, which guarantees to the state, republican form of government.

Section 4, Art. IV of this constitution reads as follows:

"The United States shall guaranty to every state in this union a republican form of government, ***."

What is the true intent and meaning of the language thus used? Historically speaking the word republic has been used and applied in various senses to aristocracies and monarchies. To Rome under the Kings, to Sparta and Carthage, under a Senate for life, to the United Netherlands under the stadtholders and hereditary nobles, to Poland, under an aristocracy and monarchy, and to Great Britain under a monarchy.

Likewise the term democracy has been applied by writers upon the subject, to government exercised by the collective body of the people, whether exercised by them directly or through representatives chosen by them. And again the term aristocracy has been used to designate a government wherein an independent few possess and exercise sovereignty and also where the representatives chosen by the people exercise this power.

It is important then to determine the meaning of the term "republican in form" as used by the framers of the constitution. It is conceded by all that an aristocracy or a monarchy in any form would be anti-republic, yet under the broad definition of the term neither of these would be more so than a pure democracy. Here resort must be had to the constitutional history of our country for a correct interpretation of the language used.

It is an elementary rule, "that the best and truest mode of expounding an instrument is by referring to the time when, and

the circumstances under which it was made."[1]

This fundamental principle of construction annexes itself to the constitution. A casual reading of the history of the formation period of our Federal Constitution and the decisions of the courts thereafter, convinces one that the idea of establishing a government of pure democracy was not contemplated.

The opponents of the Federal constitution (when submitted for ratification) were loud and vigorous in their protestation that a pure democracy could be made effective only when confined to a limited territory possessing a small population. This opposition was set at rest by the construction then placed upon the term "government republican in form" to the effect that it excluded all idea of a pure democracy.

A government republican in form was then understood, and ever since has been construed to be one wherein sovereign power resides in a certain body of the people and is exercised by representatives elected by them.[2]

The ordinance of Congress of 1787 provided for a government of the territory of the United States northwest of the Ohio River and authorized the creation of new states therein and provided such states be admitted into the Union on an equal footing with the original states in all respects, and further provided that the constitution and government so to be formed should be republican and conform to the principles contained in the articles.

By act of congress approved August 6th, 1846, the people of the territory of Wisconsin were enabled to form a constitution for admission into the Union. By act of congress approved May 29th, 1848, (the preamble of which recited, that the people of said territory did form for themselves a constitution and state government which said constitution is republican), Wisconsin was admitted into the Union. The question naturally arises whether it would not be a violation of the spirit of this compact for Wisconsin to now form any government which would contravene the scheme of government as established by this Federation without the consent of the other states to the compact.

Is not every state in the Union interested in the question as to whether a sister state shall set up a government of her own at variance with the fundamental distribution of the powers of state as contemplated by the framers of our Federal Constitution? Every state in the Union is interested in the question as to whether or not we are an "indestructible union of indestructible states." The aim of government is justice. To secure this greater stability was required. That all might receive fair and equal treatment the majority consented to tie its own hands. It recognized the principle that "no man can be a judge in his own case" and introduced into free government the division of power of state into three co-ordinate branches and made each as independent and impartial as the wisdom of man could devise. This is the distinguishing and fundamental theory of our government and constitutes the most remarkable example of self-control that history affords.

History has demonstrated that government of pure democracy was a failure, occasioned mainly by the tyranny of the majority. It is replete with instances of oppression and this constituted the prime

(1) See Brooms Legal Maxims, 7th Edition 516. "Great regard," says Coke, "in construing a statute is to be paid to the construction which the sages of the law who lived about the time or soon after it was made put upon it because they were best able to judge the intentions of the makers at the time when the law was made." See also: Brooms Legal Maxims, 517, 2 Inst. 11, 13, 181; State ex rel. Hudd vs. Timme, 54 Wis. 318, 326.

(2) See Webster's Dictionery and the Federalist, Nos. 10 and 39. This is a uniform interpretation as found in the text-books and decisions of our courts. See 1 Willoughby on Constitution, 152, 153, and cases there cited. Mr. Willoughby here also quotes from Judge Cooley as follows: "By a republican form of government, is understood a government by representatives chosen by the people; and it contrasts on the one side with a democracy, in which the people or community as an organization whole wield the sovereign powers of government, and, on the other side, with the rule of one man as King, Emperor, Czar or Sultan, or with that of one class of men as an aristocracy."

cause for the establishment of a republic representative in form with a system of checks and balances and a trinity of forces and power acting as a unit. The executive, legislative and judicial departments possess inherently centripetal and centrifugal forces that keep governmental procedure in an established orbit. The executive with the power of veto is protected against legislative encroachment. The legislature with power of impeachment is afforded protection against the judicial and executive departments, and the judiciary in turn requires the executive and the legislative powers to keep within constitutional limitations. Thus it is that stability is imparted to our form of government and equal justice secured to all. If any one of these departments is deprived of its fundamental power the equilibrium is destroyed and factional strife takes the place of orderly and well-balanced procedure.

Chief Justice Booth in the case of Rice v. Foster,[3] discussing this question used the following language:

"The powers of government in the United States are derived from the people, who are the origin and source of sovereign authority. The framers of the Constitution of the United States, and of the first Constitution of this state, were men of wisdom, experience, disinterested patriotism, and versed in the science of government. They had been taught by the lessons of history, that equal and indeed greater dangers resulted from a pure democracy, than from an absolute monarchy. Each leads to despotism. Wherever the power of making laws, which is the supreme power in a state, has been exercised directly by the people under any system of polity, and not by representation, civil liberty has been overthrown. Popular rights and universal suffrage the favorite theme of every demagogue, afford, without constitutional control or a restraining power, no security to the rights of individuals, or to the permanent peace and safety of society. In every government founded on popular will, the people, although intending to do right, are the subject of impulse and passion; and have been betrayed into acts of folly, rashness and enormity, by the flattery, deception and influence of demagogues. A triumphant majority oppresses the minority; each contending faction, when it obtains the supremacy, tramples on the rights of the weaker; the great aim and objects of civil government are prostrated amidst tumult, violence and anarchy; and those pretended patriots, abounding in all ages, who commence their political career as the disinterested friends of the people, terminate it by becoming their tyrants and oppressors. History attests the fact, that excesses of deeper atrocity have been committed by a vindictive dominant party, acting in the name of the people than by any single despot. In modern times, the scenes of bloodshed and horror enacted by the democracy of revolutionary France, in the days of her short-lived, misnamed republic, shocked the friends of rational liberty throughout the civilized world. ***In the convention of 1787, which formed the Constitution of the United States, the spirit of insubordination and the tendency to a democracy in many parts of our country, were viewed as unfavorable auguries in regard both to the adoption of the constitution and its perpetuity. The members most tenacious of republicanism, were as loud as any in declaiming against the vices of democracy. Mr. Gerry of Massachusetts, the friend and associate of Mr. Jefferson, thought it "the worst of all political evils." "The necessity of guarding against the tendencies, in order to attain stability and permanency in our government, was acknowledged by all.***

In the debates on the Federal Constitution in the Virginia convention, Mr. Madison, always the advocate of popular rights, subject to the wholesome restraints of law, remarked, 'that turbulence, violence, and abuse of power, by the majority trampling on the rights of the minority, have produced factions and commotions; and that these in republics, more frequently than

(3) 4th Harrington, (Del.), 485.

any other cause, have produced despotism.' 'If,' he observes, 'we go over the whole history of ancient and modern republics we shall find their destruction to have generally resulted from those causes. If we consider the peculiar situation of the United States, and go to the sources of that diversity of sentiment which pervades its inhabitants, we shall find great danger to fear that the same causes may terminate here, in the same fatal effects which they produced in those republics.' To guard against these dangers and the evil tendencies of a democracy, our republican government was instituted by the consent of the people. The characteristics which distinguishes it from the miscalled republics of ancient and modern times is, that none of the powers of sovereignty are exercised by the people; but all of them by separate, co-ordinate branches of government in whom those powers are vested by the constitution. These co-ordinate branches are intended to operate as balances, checks and restraints, not only upon each other, but upon the people themselves; to guard them against their own rashness, precipitancy and misguided zeal; and to protect the minority against the injustice of the majority."

Yet, notwithstanding the undisputable facts as shown by constitutional history, a United States Senator recently delivered a speech in the United States Senate in which he used the following language:

"For decades we have directed our efforts toward improving the shingles on the roof of our national superstructure without realizing that the foundation is absolutely rotten because its cementation is one of selfishness instead of general welfare, legislation and public servants being directed by and accountable to the political boss and through him to his principal, the largest campaign contributor."[4]

To the sentiment that the foundation is rotten the writer takes exception. The foundation is secure and the "superstructure" has stood as a beacon-light for other nations. It has withstood the shocks of nullification and secession, but could it long survive the revolution here contemplated? I submit that history has answered this question in the negative. It is not the foundation that is rotten, but the office-seeker who occasionally through fraud and corruption secures his position of trust and then betrays it. But for such as these democracy affords the greatest opportunity. The remedy is not to be found in the destruction of our governmental institution. "The shingles" and "foundation" are not the cause of the evil. To rid the temple of thieves, the temple was not destroyed, and the people under our present form of government can, if they so desire, by an efficient, self-enforcing corrupt practices act, and a thorough-going and extended merit system, cure the evil complained of. By a self-enforcing corrupt practices act I mean such as Great Britain now possesses. There, if the successful candidate has used or permitted corrupt influences to secure his election, his opponent, if free from the offense, *ipso facto,* takes the place of the otherwise successful candidate.

GLENWAY MAXON.

Milwaukee, Wis.

(4) 72 Cent. L. J. ——

HUSBAND AND WIFE—PRIVILEGED COMMUNICATION.

GROSS v. STATE.

Court of Criminal Appeals of Texas, February 8, 1911. Rehearing Denied March 15, 1911.

135 S. W. 373.

Under Code Cr. Proc. § 774, providing that neither husband nor wife shall testify as to communication made during marriage, a letter by a husband to his wife is a privileged communication and the privilege having attached, cannot be defeated by allowing one who has read the letter to testify as to its contents.

DAVIDSON, P. J.: Appellant was charged with and convicted of incest with his daughter Maud. * * * * * * * * * *

6. Another bill of exceptions recites that the state placed upon the stand Mrs. Maud Coleman, who stated that she lived at Miles,

in Runnels county, was the mother of Mrs. Jim, or Eva, Gross, the wife of defendant, and that Mrs. Jim Gross and her children had been living at her home since the defendant got into this trouble. She further testified that she was acquainted with the handwriting of defendant and knew it when she saw it; and, further, while defendant was at Putnam, Texas, he wrote a letter to his wife, Mrs. Jim Gross, and that she, witness, read the letter; that she "was prowling to see what was going on between them in the way of correspondence," and through curiosity she got hold of this letter and read it. She further testified that she just picked up this letter in the house; that it was her home; but did not know why Mrs. Jim Gross, wife of defendant, did not give this letter to her, nor did she do anything to direct her attention to this particular letter, and this letter that defendant sent to his wife from Putman, Texas, was burned up, as she saw her daughter, Mrs. Jim Gross, put this letter in the stove; and that she knew the contents of this letter from defendant to his wife, it being the same letter that she saw Mrs. Jim Gross burn; that she was not hunting evidence against defendant, as he had not at that time been arrested, and she hoped the matter would never get out. The state then proposed to prove by the witness, Mrs. Maud Coleman, the contents of the letter, to which the defendant objected for the following reasons: The letter was a privilege communication between defendant and his wife; that the testimony shows that the witness Mrs. Maud Coleman was looking for letters, and that she found this particular letter in her home; that she was searching for letters from defendant to his wife; and, further, the letter was not admissible, nor is it admissible for the witness to state the contents as to what was in said letter; that it is making and using the wife as a witness against the defendant, her husband, indirectly by using a privileged communication between them as husband and wife. These objections were all overruled, and witness testified that in said letter, being the same letter that wife of appellant burned, he wrote his wife the following: "For God's sake, get Emory and Maud Burns out of the way, for they could put me to death; you ought to do that much for me."

The court says this testimony was admitted on the theory that if the communication had been verbally made by defendant to his wife, and had been overheard by Mrs. Coleman, she could have testified to it, and it being made in a letter which came into Mrs. Coleman's hands without any act on the wife's part in aid thereof, the contents thereof could likewise be shown by the witness. There is a broad distinction between the introduction of conversations overheard by third parties occurring between husband and wife and the introduction of letters written by one to the other, as shown by practically, if not all, the authorities. It is unnecessary to take up or discuss the question as to conversations going on between husband and wife which are overheard by other parties. That question is not in the case, and it is unnecessary to discuss it. We hold that the introduction of the contents of the letter through the witness Mrs. Maud Coleman was inadmissible. It was a privileged communication under the statute, and therefore interdicted. Article 774, Code of Criminal Procedure. That statute says: "Neither husband, nor wife shall in any case testify as to communications made by one to the other while married; nor shall they, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation subsisted, except in a case where one or the other is prosecuted for an offense, and a declaration or communication made by the wife to the husband, or by the husband to the wife, goes to extenuate or justify an offense for which either is on trial."

In the case of Hearne v. State, 50 Tex. Cr. R. 431, 97 S. W. 1050, the court permitted the introduction in evidence of 10 or 12 letters alleged to have been written subsequent to the marriage of appellant with C. Wilson, which letters were written by appellant to her. The letters were admitted without objection on the part of appellant. Subsequently appellant moved to exclude the same from the consideration of the jury on the ground that they were privileged communications by the husband to the wife. The state relied upon Crow v. State, 72 S. W. 392, to sustain the insistence that the letters were admissible. The court said, in substance, that the objection urged in the Crow Case was, not that they were privileged communications, but that the testimony is remote. In the Hearne Case the letters were held inadmissible, and the court further said: "Letters of the wife to the husband or husband to the wife are not admissible evidence in a prosecution for bigamy. We will not mention these letters seriatim, but hold that upon another trial none of the letters should be introduced that come within this rule." The judgment in that case was reversed on account of the admission of the letters. The same rule has been laid down in Cole v. State, 48 Tex. Cr. R. 447, 88 S. W. 341; Burke v. State, 15 Tex. Cr. R. 156; Davis v. State, 45 Tex. Cr. R. 292, 77 S. W. 451; Gant

v. State, 55 Tex. Cr. R. 284, 116 S. W. 801. In the latter case the court said: "The privilege extends beyond dissolution of marriage relation by death or divorce. Ency. of Ev. pp. 196, 197; note 43 for collation of authorities. It includes letters from one spouse to the other." Mitchell v. Mitchell, 80 Tex. 101, 15 S. W. 705; Mercer v. State, 40 Fla. 216, 24 South. 154, 74 Am. St. Rep. 135; Connell v. Hudson, 53 Mo. App. 418; Commonwealth v. Sapp, 90 Ky. 580, 14 S. W. 834, 29 Am. St. Rep. 414; Stein v. Bowman, 13 Pet. 209, 10 L. Ed. 129; Saunders v. Hendrix, 5 Ala. 224; 1 Greenlf. on Ev. §§ 254, 337, 338, and notes; Cook v. Grange, 18 Ohio, 526-531; Brown v. Wood, 121 Mass. 137; Maynard v. Vinton, 59 Mich. 139, 26 N. W. 401, 60 Am. Rep. 276; Jacobs v. Hesler, 113 Mass. 157; Hitchcock v. Moore, 70 Mich. 112, 37 N. W. 914, 14 Am. St. Rep. 474; Smith v. Potter, 27 Vt. 304, 65 Am. Dec. 198; Brock v. Brock, 116 Pa. 109, 9 Atl. 486. The above list of cases is cited in Gants' Case, supra.

In the Mercer Case, supra, which is also found reported in 74 Am. St. Rep. 135, it is shown that Mercer was charged jointly with Wesley Bush for willfully driving an ox upon the railroad track, and were jointly tried and convicted; each being sentenced to 10 years in the penitentiary. The court in that case, passing upon the question of the admissibility of letters from husband and wife, uses this language: "Such confidential communications between husband and wife have always been regarded as privileged, and when attempted to be detailed or developed by either of the parties to whom the communication has been intrusted the law not only forbids, but will not permit, it to be done. Society has a deeply rooted interest in the preservation of the peace of families and in the maintenance of the sacred institutions of marriage, and its strongest safeguard is to preserve with jealous care any violation of those hallowed confidences inherent in, and inseparable from, the marital status. As Mr. Greenleaf puts it: 'The great object of the world is to secure domestic happiness by placing the protecting seal of the law upon the confidential communications between husband and wife, and whatever has come to the knowledge of either by means of the hallowed confidence which that relation inspires cannot be afterwards developed in testimony, even though the other party be no longer living.'" 1 Greenleaf on Evidence (15th Ed.) §§ 254, 334, 337; 2 Taylor on Evidence, §§ 908 and 910. The court further says: "That the letter from the husband to the wife was not sought to be introduced directly through the wife as a witness to whom it had been written, but in some way, not disclosed by the record, had found its way into the possession of the attorneys for the defendant, and its offer in evidence was from their immediate custody. There is a considerable array of authorities to the effect that when confidential communications between husband and wife get out of the possession and control of the parties to the confidence and find their way into the possession and control of third persons, regardless of the manner in which the possession thereof may be obtained by such third person, that then communications lose their protected privileges of the law and become competent and admissible. We cannot agree to the correctness of this rule thus broadly laid down by these and other authorities, but think the policy of the law that forms the foundation of the general rule is far more strongly upheld and subserved by those authorities that recognize and declare certain class of communications to be privileged from the inherent character of the communication itself, and that in such cases the privilege attaches to the communication itself, and protects it from exposure in evidence wheresoever or in whosoever's hands it may be."

In Scott v. Commonwealth, 94 Ky. 511, 23 S. W. 219, 42 Am. St. Rep. 357, Judge Lewis, rendering the opinion for the Court of Appeals of Kentucky, uses this language: "For it is essential to the happiness of social life that the confidence existing between husband and wife should be sacredly protected and cherished in its most unlimited extent, and to break down and impair great principles which protect the sanctity of that relation would be to destroy the best solaces of human existence. The evidence in this case shows that the letter in question was procured from appellant's wife by a brother of the deceased and thus came into the possession of the commonwealth's attorney, but it seems to us, whether given up by her voluntarily or obtained against her will, it was a disclosure of what had been written by her husband in the privacy and confidence of the marital relation, and the use of it against the husband in this case was just as much against the policy of the law, because as fully within the reason of it, as would have been a disclosure of what he had said to her in the confidence and privacy of the marriage relation," citing Selden v. State, 74 Wis. 271, 42 N. W. 218, 17 Am. St. Rep. 144, which was a prosecution of a party for perjury, and in the proceedings against his wife for divorce, he made affidavit that he did not know her place of residence, and the question on the trial was whether letters written by him to her pending proceedings

for divorce showing he did know her place of residence, and which she had placed in the possession of her attorneys, were competent evidence against him in a criminal trial. Applying the rule mentioned, it was here held that the letters being confidential communications, not even the address on the envelopes, could be used as evidence against the husband.

These authorities, we think, are sufficient to show that the ruling of the trial court was error, and we deem it unnecessary to discuss this question further, or add any remarks to those already quoted. The reasons are sufficiently stated in fully appropriate language.

In the case of Liggett v. Glenn, 51 Fed. 381, 2 C. C. A. 286, the court was passing upon privileged communications between attorney and client, and uses very much the same reasoning as the cases cited do with reference to marital relation. Our statute, article 773 of the Code of Criminal Procedure, in regard to privileged communications between attorney and client, is as follows: "All persons except those enumerated in articles 768 and 775, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship." This statute declares the law in our own state in regard to privileged communications between client and attorney. The two statutes are quite similar, and have been rigorously upheld.

In Liggett v. Glenn, supra, Judge Shiras, delivering the opinion of the court, said: "The admissibility of the communications, in our judgment, is not dependent upon the manner in which control thereof is obtained from the counsel, but upon the inherent character of the communication itself. If the admission or statement sought to be put in evidence was made by reason of the confidential relation existing between client and counsel, it becomes a privileged communication, and as such it is not competent evidence against the client. Its competency is not dependent upon the mere manner in which knowledge thereof may be obtained from counsel. The principle forbidding its use is not adopted as a mere rule of professional conduct on part of the attorney. It confers a right upon the client for his protection and advantage, and which he alone is authorized to waive. It will not do to hold that the communication loses its confidential and privileged character if knowledge thereof can be obtained by means which do not involve the counsel in a breach of professional duty. For illustration, a letter is written by a client to his attorney containing statements of a privileged nature. The counsel, having this letter on his person, meets with an accident, causing his death. Third parties in this way become possessed of the letter, and from them it passes to the possession of the adversary party. Has this letter lost its privileged character and become competent evidence against the writer, simply because it passed from the possession of his counsel, to whom it was written, without fault on part of the attorney? Suppose that, upon a trial of a cause, an attorney is sworn as a witness, and he is asked to produce a letter written him by his client. He refuses on the ground that it is a confidential communications. The trial court overrules the objection, and compels the production of the letter, which is filed as part of the evidence in the case. An appellate court reverses the ruling of the trial court on this question holding that the letter was privileged, and sends the case back for a new trial. On the second hearing the attorney is not called as a witness, but the clerk, in whose custody the letter was placed on the first trial, is summoned by a subpoena duces tecum, and required to produce the letter in order that the same may be read in evidence. Is it possible that this letter, being a confidential communication between client and counsel, can be rightfully put in evidence upon the theory that the possession thereof was obtained without fault on part of the attorney? The argument, founded upon the assumption that the admissibility of confidential communications between client and counsel is dependent solely upon considerations of the duty of counsel not to make known that which was communicated to him professionally, is, in our judgment, faulty, in that it ignores the main purpose of the rule, which is that the client shall be at liberty to freely communicate to his attorney knowledge of all matters connected with the business in hand upon the assurance that confidential communications thus made are privileged and cannot be used in evidence against him, unless he deprives them of their privileged character."

It is unnecessary to quote further from the opinion of Judge Shiras. It does settle the question, and is in harmony with all the authorities, so far as we are aware, to the effect that privileged communications between counsel and client cannot be used as evidence directly, nor will its use be permitted in any indirect or surreptitious manner. The communication in any event is privileged. If this is true as to the relation of attorney and client, how much stronger the reasoning when

privileged communications arise between husband and wife. Not minimizing the same relation of client and attorney, but we do say that the relation between husband and wife is far more sacred, and to be the more strongly guarded, than that of relation between attorney and client. Our statute interdicts the use of testimony in both instances. It makes no difference in this case that Mrs. Maud Coleman obtained the possession of the letter in the manner that she did; that possession and her knowledge of the contents of the letter did not rob it of its confidential and privileged character. If obtaining the letter by Mrs. Coleman as she states, and her statement of its contents could be used, the wife could turn over the letter to state's counsel, and thereby constitute it admissible evidence. To hold this would be to in effect abrogate the statute and break down the purpose of the law, which was to shield and protect the privileged matters occurring between husband and wife. Not only does this privilege exist during the lifetime, but it passes beyond the life of either or both, and becomes a permanent and fixed fact for all time, whether this relation ceases to exist by divorce or death. * * * * * *

For the errors indicated the judgment is reversed, and the cause is remanded.

NOTE.—*When Privileged Communications Between Husband and Wife are Held Not Privileged.*—This head note seems paradoxical, and indeed it asserts a paradox. Yet it is merely the frank, full and true statement of a conclusion reached by perhaps the numerical weight of authority in America. On principle, the writer agrees with the doctrine laid down by the Texas court in the opinion above quoted and for the reasons therein so clearly set forth. (The question has been heretofore referred to in 70 Cent. L. J. 75, and 71 Cent. L. J. 438). As opposed to this line of reasoning, the following opinions are submitted for the consideration of our readers.

In State v. Buffington, 20 Kan. 599 (1878), a leading case, a letter, written by the accused to his wife, delivered to her through the mails, and handed over by her to the prosecuting witness, was produced by the prosecution at the trial, and admitted in evidence against the objection of the accused. The court said, page 614: "It does not appear that either the defendant or his wife had at that time (at the trial) any control over the letter. It is certainly true that a communication between husband and wife is a privileged communication. But it is privileged only while it remains within their custody and control, or while it remains within the custody and control of their agents or representatives." We seek in vain for the premises on which this doctrine is based.

In Commonwealth v. Fisher, 221 Pa. 538, 70 A. 865 (1908), it was held that "Letters dictated by a prisoner in jail, charged with murder, to fellow prisoners, addressed to the prisoner's wife, duly mailed, and delivered by her to the district attorney, are not admissible against the husband at his trial. The admission of such letters is in effect permitting the wife to testify against her husband, which cannot be done under the statute." The letters were held confidential and privileged; but the court intimates that the contents thereof would have been admissible in evidence if testified to otherwise than by the wife. The court said: "We see no reason why the declarations contained in the letters, if they were made to other parties, competent to testify, should not be proven by them." The court assumed that the letter had been voluntarily yielded up to the district attorney by the wife, and this fact was held controlling, presumably on the ground that the wife had the right to surrender the benefit of the privilege. It is to be borne in mind that it was the husband's privilege, not the wife's, that was being invaded.

In People v. Swaile, 12 Cal. App. 192; 107 Pac. 134 (1909), on the question of the admissibility in evidence of a letter written by defendant to his wife confessing the offense charged, the court said, page 195: "The letter was given (by the defendant) to one of the officers to carry to the wife. It was not sealed or enclosed in an envelope, and, at the request of the officer, was returned to him by the wife after she had read it. The statement introduced by the letter is that of the husband, and there was no examination of the wife as to a privileged communication, nor was she examined as a witness against her husband. * * * If it be conceded that the letter was illegally obtained, this would not operate to exclude it from evidence on the ground that it was a privileged communication, or that the evidence was self-criminating. Though papers and other subjects of evidence may have been illegally taken from the possession of the party against whom they are offered, or otherwise unlawfully obtained, this is no valid objection to their admissibility if they are pertinent to the issue. (1 Greenleaf on Evid. 16th ed., sec. 254 a.)" The necessary inference is that any letter from husband to wife can be introduced in evidence so long as the wife is not called upon to testify as to such letter. The court seems to have overlooked the nature of the privilege. It is true the letter is the statement of the husband and not that of the wife. It is also true that the mere fact that papers have been illegally obtained does not exclude them from the evidence. Nevertheless, the inherent privileged nature thereof remains the same and ought to exclude them in all cases.

This question is quite fully treated in Hammons v. State, 73 Ark. 495; 84 S. W. 718; 68 L. R. A. 234; 108 Am. St. Rep. 66, in which the authorities pro and con are collated. In this case an incriminatory letter written by the accused to his wife, but which accidentally fell into the hands of another without the wife's connivance was held admissible against the accused. The principles on which the court based its decision may be gathered from the following quotation, p. 500: "As the tendency of the rule (regarding privileged communications) is to prevent a full disclosure of the truth, it must be strictly construed * * * The object of the rule is to prevent husband or wife from impairing the sacredness of confidential communications between

themselves, and hence they are rendered incompetent as witnesses to such transactions and letters, and other communications between them are shielded by the privilege of the marital relation, so long as such letters are in the possession or control of either, and their production cannot be compelled when held by husband or wife or their agents or representatives. This is the extreme limit that public policy and the weight of authority extends the privilege. The letter in question was not taken from the custody of the wife, neither her person nor privilege was violated by its production, and it was admissible evidence." Here, too, the court overlooks the fact that it is not the privilege of the wife that is in question, but of the husband who wrote the letter; and unquestionably his privilege is violated by the production of the letter without his consent. As said in this case by Mr. Justice McCulloch in a dissenting opinion: "It is unimportant and immaterial how the letter comes into the possession of the prosecution, so that it is not with the consent of the husband who wrote it, and against whom it is sought to be used. The benefit is one that results to him only, and only he can raise the privilege. * * * It is the policy of the law to encourage, rather than to limit, free communication and sacred confidences between husband and wife, and the exigencies of no case can demand a violation of the privilege with which the law clothes such communications." We think the true rule on principle could scarcely be better stated than as expressed in the words of the dissenting opinion just quoted.

A. E. GANAHL.

CORAM NON JUDICE.

APPROACHING PROBLEMS IN FEDERAL CONTROL.

Entirely new legal problems of great magnitude are foreshadowed by recent important utterances by George M. Reynolds, president of the Continental and Commercial National Bank of Chicago, touching the need of federal control of railroads and other public service corporations for the safeguarding of their securities, and also that of President H. U. Mudge of the Rock Island system also favoring federal control. The declaration by President Theodore N. Vail of the American Telephone & Telegraph Company flatly favoring control of public utilities by means of permanent public commissions also shows a radically new trend concerning the future of quasi-public corporations.

The subject of corporate control also discussed by George Kindel, Denver's persistent and successful "railroad rate reformer" and Francis J. Heney, the beneficent prosecutor of the Pacific Coast, and President Benjamin Ide Wheeler, of the University of California, shows how rapidly of late the regulation of corporations has advanced. Here is what they have said:

Theodore N. Vail, president of the American Telephone & Telegraph Company (the Bell system) in his annual report, said: "That there has been in large measure a reason or cause for the existing unfavorable public opinion as to corporations, trusts and combinations, is beyond question. What is and should be condemned, prevented and punished, is the abuse made of corporate machinery to the detriment of the public welfare, and such abuse as has been and is being practiced so extensively for purely speculative and often-times swindling enterprises.

"Public control or regulation of Public Service Corporations by permanent commissions, has come to stay. It would in time establish a course of practice and precedent for the guidance of all concerned.

"Such control and regulation can and should stop all abuses of capitalization, of extortion or of overcharge, of unreasonable division of profits."

George M. Reynolds, president of the biggest bank in the West, the Continental and Commercial National of Chicago, said: "National supervision of public service corporations is inevitable and necessary. There is no doubt that capital has not been handled conservatively and economically. The so-called big interests have undoubtedly abused the public's confidence at times. This must be remedied.

"Conservatism in the handling of the public's money would mean doing away with panics. The getting rid of what is bad in Wall Street will most certainly be accomplished by an intelligent national supervision."

Stuyvesant Fish of New York said: "Representatives of corporate interests who have at heart the welfare of the holders of their securities will do well to urge a form of regulation of public service corporations which will protect the interests of investors as well as that of the non-investing public. It is useless to oppose such regulation. But in the zeal that has seized law makers of the country the fact that state regulation of corporations imposes double obligation too often is lost to sight. The correct position was ably expressed by the statement of President Vail of the Bell Telephone Companies that governmental control should ensure good service, fair rates to the public and also fair returns to investors. If the rights of the investor are sacrificed he will withdraw from this class of enterprises and as a result the public will suffer. There is a great danger from regulatory measures at present and it is well to call attention to the reciprocal obligations imposed by such legislation."

George Kindel, Denver's freight rate reformer who, during a twenty-year fight has secured the readjustment of freight rates on many western railroads, said: "I agree that the state control of public utility corporations has come to stay. I am unqualifiedly in favor of the protection of rightly conducted corporations, and would keep all natural monopolies, such as telephone companies, free from competition when rates are not exorbitant. The chief danger that I can see in commission regulation of corporations is in the personnel of such commissions; the greatest care should be shown in choosing commissioners."

Francis J. Heney of San Francisco, the intrepid and relentless prosecutor, has pointed out that effective public regulation is the only preventive of public ownership of public utilities, and doubts if even it can prove effective.

"Public control of public utilities is here to stay," said Mr. Heney, "but ultimately it will

take the form of public ownership, for the corporations are never content and their rapacity is never satisfied."

Benjamin Ide Wheeler, president of the University of California favors state, not national, control. "In the case of the great public service corporations," said, President Wheeler "state regulation is the only way to ward off state ownership. The individual is too small to stand against the great corporation, but his interest must be represented by somebody. We know of no other somebody than the state, which, however, must not confiscate, must not so narrow the field of opportunity as to quench the spirit of initiative.

"The people must see to it that the state is strictly fair in its dealings with the public service corporations, but the declaration of President Vail of the Bell Companies, that regulation by permanent commissions rightfully has come to stay, shows a promising new spirit on the part of the corporation leaders."

CORRESPONDENCE.

CONSTRUING "SELLS" AS "OFFERS TO SELL"

Editor Central Law Journal:

Your editorial note, reviewing in 72 Central Law Journal, 322, the case of Luke v. Livingston by the Court of Appeals of Georgia, is so manifestly unfair and incorrect as to deserve notice. You start off by saying that no authority was cited for the proposition contained in the syllabus. The case of Sivell v. Hogan, 119 Ga. 167, referred to in the body of the opinion, is ample authority for the proposition stated in the syllabus. In that case, where the contract sued on (referring to cotton as the case under review), began with the words: "Know all men by these presents, that I have this day sold," etc., and throughout the opinion the court speaks of this document as a mere offer. You also do Judge Russell, who wrote the opinion, the injustice of saying that he seems to have confused an "offer to sell" with an "agreement to sell," and that the terms are used synonymously in the syllabus. The syllabus does state that in writings relating to the sale of property not then capable of delivery, the word "sell" will be construed as meaning "offers to sell" or "agrees to sell"; and that it will be construed as meaning "offers to sell" (that is, an option or an offer as the syllabus states), unless it affirmatively appears that the contract has been accepted. This is not equivalent to saying that the expressions "offers to sell" and "agrees to sell" mean the same thing; but as expressing a contrast, that is, an offer to sell, if not accepted; an agreement to sell, if accepted; and is therefore either the one or the other (as the syllabus states) in all cases.

You seem to concede that Simpson v. Sanders, 60 S. E. 540, (130 Ga. 265), would have been a precedent for the proposition stated in the syllabus of the case under review, if the contract there involved had been signed by both parties. The supreme court did not put the decision on this ground, and could not well have done so, in view of three previous cases (Cooley v. Moss, 123 Ga. 707; Harrison v. Wilson Lumber Co., 119 Ga. 6; Huggins v. Lime Co., 121 Ga. 311), where similar contracts had been signed by both parties and a similar construction had been given to the contract. At the top of page 711, in the report of the case of Cooley v. Moss, supra, the point was expressly made and the court decided that mutual signing will not suffice—the contract must contain mutual promises. Whatever may be the rule elsewhere, the syllabus in the case of Luke v. Livingston merely states what is in Georgia a proposition of law so thoroughly established by former adjudications, and so well understood by the bar, as not to justify an elaborate citation of authorities when announced by the court. No doubt, counsel for both sides conceded that the contract, though signed by both parties, would have been unilateral and would have amounted to nothing more than an offer to sell, unless an acceptance appeared; and the contest in the case arose over the question as to whether or not there was an acceptance.

You say that the case of Glass v. Blazer Bros., 91 Mo. App. 564, is diametrically opposed to the decision in the case under review. From your statement of that case it appears that the court construed a contract identical with the one involved in the case under review as an actual sale passing title in praesenti. The Court of Appeals of Georgia could not have given the contract involved in Luke v. Livingston such a construction without disregarding a statute of this state compelling a different construction. See Civil Code of 1910, sections 4127, 4126, 4125.

It appears, therefore, that the proposition announced in Luke v. Livingston is not novel in the jurisprudence of this state, and that in this instance proof of the truth of the poet's saying: "Quandoque dormitat Homerus," is to be found not in the decision, but in the editorial note reviewing and adversely criticising it.

Yours very truly,

CHAS. B. SHELTON.

Atlanta, Ga.

NEWS ITEM.

THE MICHIGAN STATE BAR ASSOCIATION.

The 21st annual meeting will be held at Battle Creek, Thursday and Friday, July 6th and 7th, 1911.

Attorney-General Geo. W. Wickersham, Judge Arthur C. Denison, Prof. Jerome C. Knowlton, Hon. Thomas A. E. Weadock, Hon. A. B. Eldredge and Hon. Grant Fellows will be on the program.

BOOKS RECEIVED.

Encyclopaedia of Law and Procedure, Vol. 37, Streets & Highways to Tenancy. William Mack, LL. D., Editor-in-chief. Price, $7.50. New York. American Law Book Co.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abatement and Revival**—Actions Surviving.—An action against a railroad company for injuries to property by fire survives in favor of one of the co-owners of the property such as a partner, upon the death of the other co-owner.—Long v. Kansas City, M. & B. R. Co., Ala., 54 So. 62.

2. **Account Stated**—Accord and Satisfaction.—Where one party presents to another a bill for a book account of a certain amount and the other returns the bill with his check in payment, which is accepted and indorsed that the first party receives it in full of the account, it establishes a complete settlement of the account, barring fraud and mistakes.—Bassick Gold Mine Co. v. Beardsley, Colo., 112 Pac. 770.

3. **Adjoining Landowners**—Natural Supports.—Where a landowner by digging on his own land has deprived the land of his neighbor of its natural support, he is, whether negligent or not, liable for damages to his neighbor, not only for injuries to the soil, but for injuries to buildings.—Langhorne v. Turman, Ky., 133 S. W. 1008.

4. **Adverse Possession**—Boundaries.—Adjoining landowners may agree upon the boundary between their lands, and their possession on either side up to the boundary so agreed upon will be mutually adverse.—Edwards v. Fleming, Kan., 112 Pac. 836.

5.——Continuity.—Disconnected periods of occupancy cannot be added to constitute the 15 years necessary to give title by adverse possession.—Sparks v. Jackson, Ky., 133 S. W. 959. 959.

6.——Possession by Tenant.—Possession, on which title by adverse possession can be based, may be had through a tenant.—Willin v. Roe, Del., 78 Atl. 773.

7. **Alteration of Instruments** — Consent of Parties.—As a rule, a willful and material alteration of a writing after execution by one of the parties thereto without the authority or consent of another party avoids it as to the nonconsenting party.—Matson v. Jarvis, Tex., 133 S. W. 941.

8.——Material Alterations.—Addition of word "date" in writing after the word "maturity" in note bearing interest from maturity held a material alteration.—Baldwin v. Haskell Nat. Bank, Tex., 133 S. W. 864.

9.——Right to Plead Non Est Factum.—A grantor, when sued at law on the deed in its form as altered by the grantee after execution, and without the consent of the grantor, held entitled to plead non est factum and prove the alteration.—Churchill v. Capen, Vt., 78 Atl. 734.

10. **Animals**—Running at Large.—Owner of a dog unlawfully permitted to run at large without a muzzle held not liable for injury not proximately caused by lack of muzzle.—Forsythe v. Kluckholm, Iowa, 129 N. W. 739.

11. **Assignments**—Equitable Claims.—A claim for trespass upon actual possession of land is not assignable under the statutes so as to vest legal title and right of action in the assignee, and, if assignable at all, vests only an equity.—Deaton v. Burton, Ky., 133 S. W. 958.

12. **Attorney and Client**—Employment.—Where attorneys are shown to have been employed, it will be presumed that their employment was proper until the contrary is shown.—Howard v. Burke, Ill., 93 N. E. 775.

13.——Transfer of Clients' Property.—A transfer of a mortgagor's equity of redemption in payment or security for the services of the mortgagor's attorney will be allowed to stand as security only for the amount shown to be fairly due.—Wagner v. Phillips, N. J., 78 Atl. 806.

14.——Unprofessional Conduct.—Advertising by an attorney to attract non-residents to the state to apply for divorce through him held ground for removal or suspension.—In re Schnitzer, Nev., 112 Pac. 848.

15. **Bankruptcy**—Act of Bankruptcy.—The making of a general assignment for the benefit of creditors held available as an act of bankruptcy under the bankruptcy act.—Whittlesey v. Philip Becker & Co., 126 N. Y. Sup. 1046.

16.——Probable Debts.—A provision in a lease that in case of the bankruptcy of the lessee the lessor may re-enter and terminate the lease, and the lessee shall pay the difference between the rental value of the premises during the remainder of the term and the rent reserved, does not create a liability which is fixed at the time of the filing of a petition in bankruptcy against the lessee, provable against his estate.—Slocum v. Soliday, C. C. A., 183 Fed. 410.

17.——Provable Debts.—The remedy by which a liability is enforced is not determinative of its provability in bankruptcy, but the nature of the liability rather is the test.—In re Southern Steel Co., D. C., 183 Fed. 498.

18.——Recovery by Trustee.—The right of the trustee of a bankrupt corporation to sue to recover dividends unlawfully paid out of the capital is not defeated by his disclaimer that such payments rendered the corporation actually insolvent when they were made.—Cottrell v. Albany Card & Paper Mfg. Co., 126 N. Y. Sup. 1070.

19.——Rights of Trustee.—Where a transfer or incumbrance by a bankrupt is void as to creditors under the state law, it is also void

as to the bankrupt trustee.—Mishawaka Woolen Mfg. Co. v. Teasdale, Wis., 129 N. W. 671.

20.——Withheld Assets.—Where a bankrupt ignored a referee's order requiring him to pay over to his trustee $500 as withheld assets, the possession of that amount withheld on the day of the order would not be reviewed on an application to punish him for contempt.—In re Richards, D. C., 183 Fed. 501.

21. **Banks and Banking**—Acts of Officers.—The directors of a bank who are directors of a corporation indebted to the bank and others held incompetent to ratify on the part of the bank a transaction.—Shaw v. Crandon State Bank, Wis., 129 N. W. 794.

22.——Insolvency.—A receiver has no such adequate remedy at law against subscribers to the stock of an insolvent bank as to defeat a suit in equity for the collection of the corporate assets.—Dill v. Ebey, Ok., 112 Pac. 973.

23.——Payment of Checks.—Where a bank officer has stated to the payee or holder of checks drawn by a depositor that they are all right, the bank is not estopped to resist liability where the checks were not taken on the faith of such statement—Home Nat. Bank of Baird v. First State Bank & Trust Co. of Abilene, Tex., 133 S. W. 935.

24. **Beneficial Associations**—Contract of Membership.—A contract of membership in a beneficiary association is made with reference to the constitution, by-laws, and regulations of the association.—King v. Wynema Council, No. 10, etc., Del., 78 Atl. 845.

25. **Benefit Societies**—Fraternal Insurance.—That a fraternal insurance member was ill after adoption of an invalid by-law reducing the amount of the certificate does not avoid the effect of his payments on the reduced amount as an estoppel, where his mental capacity was not impaired.—Attorney General v. Supreme Council American Legion of Honor, Mass., 93 N. E. 797.

26. **Bills and Notes**—Attorney's Fees.—Plaintiff having employed attorneys to prosecute a suit on a note providing for attorney's fees, an agreement to pay them reasonable compensation would be implied.—Rider v. First Nat. Bank, Tex., 133 S. W. 905.

27. **Bridges**—Safety of Floor.—A bridge floor was unsafe where the planks were warped and laid loosely on the stringers, and where there was no railing.—Thompson v. Town of Bath, 126 N. Y. Sup. 1074.

28. **Brokers**—Right to Commissions.—A broker employed by a married woman to procure a lessee of her separate real estate held entitled to commissions, though the lease was not accepted because of the failure of the husband to join therein.—Ennis v. Eager, Mo., 133 S. W. 850.

29. **Burglary**—Requisites.—An indictment for burglary with intent to steal need not allege some value of the property intended to be stolen.—Gilder .v State, Tex., 133 S. W. 883.

30. **Cancellation of Instruments**—Additional Relief.—Where a court of equity obtains jurisdiction to set aside conveyances as fraudulent, it will, upon setting them aside, retain jurisdiction to adjust all the rights of the parties, though, in doing so, it may, in part, administer legal remedies.—Moore v. Brandenberg, Ill., 93 N. E. 733.

31.——Equity Jurisdiction—A bill lies to cancel a deed obtained from decedent through fraud.—Gragg v. Maynard, Mich., 129 N. W. 723.

32. **Carriers**—Bills of Lading.—Where advances are made upon goods in transit and the bill of lading or invoice is assigned, the title passes and vests in the assignee.—Manufacturers' Commercial Co. v. Rochester Ry. Co., 126 N. Y. Sup. 1051.

33.——Carriage of Passengers.—Brakeman assisting passenger to board train held bound to exercise the high degree of care that would be exercised by a very competent, cautious and prudent person.—Vicksburg, S. & P. Ry. Co. v. Jackson, Tex., 133 S. W. 925.

34.——Conversion.—Demand for goods and refusal to deliver them are only evidence of conversion when defendant might have delivered the property, and conversion does not lie against a carrier for a mere nonfeasance.—Taugher v. Northern Pac. Ry. Co., N. D., 129 N. W. 747.

35.——Preferences and Discriminations. — A common carrier cannot give preferences and discriminating rates to a shipper to whose premises there is a spur track.—Riley v. Louisville, H. & St. L. Ry. Co., Ky., 133 S. W. 971.

36.——Warehousemen.—The receipt of goods by a carrier as to which something remains to be done before they are to be transported imposes on the carrier only the responsibility of a warehouseman.—St. Louis & S. F. R. Co. v. Cavender, Ala., 54 So. 54.

37. **Chattel Mortgages**—Delivery of Property to Mortgagee.—In the absence of other existing liens, a mortgagor may surrender the property to the mortgagee, and authorize its sale, and the application of the proceeds to the mortgage debt, though no default has occurred in the terms of the mortgage.—Taugher v. Northern Pac. Ry. Co., N. D., 129 N. W. 747.

38.——Withholding from Record.—A chattel mortgage given by a bankrupt on his stock of merchandise and withheld from record for several months by the mortgagee under a tacit agreement to do so because of the effect which the record would have on the mortgagor's credit is fraudulent and void, both as to prior and subsequent creditors.—In re Duggan, C. C. A., 183 Fed. 405.

39. **Conspiracy**—Nature of Offense.—A conspiracy for an unlawful end is none the less a criminal offense because some means employed could not be made the subject of a criminal prosecution.—Commonwealth v. Stuart, Mass., 93 N. E. 825.

40. **Constitutional Law**—Legislative Powers.—The state legislature has inherent power to pass any law that it sees fit, unless it contravenes some provision of the state or federal Constitution.—City of Chicago v. M. & M. Hotel Co., Ill., 93 N. E. 753.

41.——Regulation of Bawdy Houses.—Prohibiting bawdy houses except in a defined district constitutes legitimate exercise of police power.—Hatcher v. City of Dallas, Tex., 133 S. W. 914.

42. **Contracts**—Action on Building Contract.—A contractor for the construction of a building may show in an action at law on the contract that the architect's certificate required by the contract as a condition precedent to action was fraudulently withheld, and is not required to go into court of equity to avoid the effect of his failure to obtain it.—Second Nat. Bank of Cincinnati, Ohio, v. Pan-American Bridge Co., C. C. A., 183 Fed. 391.

43.——Breach by Failure of Performance.—A party cannot recover for what he may have done toward carrying out a contract which he has, without cause, abandoned and failed to perform.—Miller v. Yockey, Colo., 112 Pac. 772.

44.——Parties.—A stranger to a contract cannot become a party to it without the consent of both the original parties.—Kruschke v. Quatsoe, Colo., 112 Pac. 769.

45.——Rescission.—A contract may be avoided by one party for his own mistake, caused by the inequitable conduct of the other, or known to and acted upon by him.—C. H. Young Co. v. Springer, Minn., 129 N. W. 773.

46.——Rights of Purchaser.—Where a promisor agrees to pay for work or goods, provided he is satisfied, he cannot compel the other party to continue to do work or make goods until he is satisfied.—Midgley v. Campbell Bldg. Co., Utah, 112 Pac. 820.

47.——Time of Performance.—Where the time of performance is not specified in the contract, neither party thereto may put the other in default without notice giving a reasonable time, specified, to complete performance.—Taylor v. Goelet, 126 N. Y. Sup. 1106.

48.——Validity.—A contract never to pursue a particular calling held invalid.—Moorman & Givens v. Parkerson, La., 54 So. 47.

49. **Corporations**—Bonds.—Unless a creditor is mislead or induced to change his position to his injury by the failure of the holder of a part of an issue of coupon bonds secured by a mortgage to present the coupons for payment of interest when due, such holder owes no duty to

the holders of the remaining bonds to do so, and his failure to do so, as to them, does not estop him from afterwards doing so.—West End Trust Co. v. Wetherill, N. J., 78 Atl. 756.

50.——Construction of Public Grants.—Public grants of power to corporations are to be strictly construed, and whatever is not plainly granted, must be taken to have been withheld.—Somerville Water Co. v. Borough of Somerville, N. J., 78 Atl. 793.

51.——False Representations as to Value of Stock.—A false representation as to the value of corporate stock made with intent to deceive the purchaser and on which he relied, will avoid the sale.—Evatt v. Hudson, Ark., 133 S. W. 1023.

52.——Fiduciary Relation of Officers.—A director of a corporation occupies a fiduciary relation to it within the rule that no dealing by one in fiduciary capacity with himself individually can prejudicially change the situation of the beneficiaries.—Shaw v. Crandon State Bank, Wis., 129 N. W. 794.

53.——Promoters.—A corporate promoter occupies a fiduciary relation to the company, though he is not, strictly speaking, its agent or trustee before incorporation.—Arnold v. Searing, N. J., 78 Atl. 72.

54.——Ratification of Agent's Act.—A corporation, like a natural person, may ratify any act which it can perform.—Rowley v. Stack-Gibbs Lumber Co., Idaho, 112 Pac. 1041.

55.——Release of Subscribers.—A secret agreement to release one set of subscribers to stock in a corporation is a fraud on the other subscribers.—Gast v. King, Ok., 112 Pac. 997.

56.——Stockholder Suing on Behalf of Corporation.—A stockholder of a corporation may not in his individual right maintain an action for a direct injury to the corporation.—Howe v. New York, N. H. & H. R. Co., 126 N. Y. Sup. 1090.

57.——Unlawful Dividends.—Deliberate unlawful payment of corporate dividends out of capital implies fraud as to creditors.—Cottrell v. Albany Card & Paper Mfg. Co., 126 N. Y. Sup. 1070.

58. **Courts**—Interpretation of State Law.—The interpretation of a state statute by the highest state court as to ownership and other interests in property will control the federal courts, unless affected by the provisions of the bankruptcy act.—Mishawaka Woolen Mfg. Co. v. Teasdale, Wis., 129 N. W. 671.

59.——Rules of Decision.—The liability of a surety on an injunction bond given in a suit in a federal court pursuant to a federal statute is governed by the principles applied by the federal courts in such cases.—Umbreit v. American Bonding Co. of Baltimore, Wis., 129 N. W. 789.

60. **Criminal Evidence**—Admissibility.—One on trial for crime may prove the confession of another in a position to have committed the crime.—Gilder v. State, Tex., 133 S. W. 883.

61. **Criminal Law**—Confession of Alleged Accomplice.—Statements of alleged confederate of accused read to him, which he did not deny, held admissible to support inference of assent to such statements.—Commonwealth v. Ballon, Pa., 78 Atl. 831.

62. **Damages**—Reduction of Loss.—The fact that the owner of property destroyed by fire from a railroad train has received from an insurance company the amount for which the property was insured, does not prevent an action by him against the railroad company for its negligent destruction.—Long v. Kansas City, M. & M. R. R. Co., Ala., 54 So. 62.

63. **Dedication**—Acts Constituting.—Where there is clear proof of an unequivocal act of dedication of land for a highway, the dedication becomes effectual on the acceptance of the public, and no definite period of use is required.—Palmer v. City of Chicago, Ill., 93 N. E. 765.

64.——Public Easement.—Where an easement is created in the public by a dedication, and there is a corporation to represent the public and take charge of its interest, the easement vests in such corporation which becomes the trustee of a use.—Porter v. International Bridge Co., N. Y., 93 N. E. 716.

65. **Deeds**—Fraudulent Representations.—Where cancellation of a deed is prayed for because of false representations of fact not a matter of opinion, and peculiarly within the knowledge of the party making them, it is no defense that the grantee did not investigate their falsity.—Evatt v. Hudson, Ark., 133 S. W. 1023.

66.——Presumptions.—It is to be presumed from the making of a deed that the grantor intended to convey some property by it.—Los Angeles County v. Hannon, Cal., 112 Pac. 878.

67. **Descent and Distribution**—Laws Governing.—One's personalty held distributable according to the law of the state in which she is domiciled at her death.—In re Grattan's Estate, N. J., 78 Atl. 813.

68. **Electricity**—Care Required.—It is the duty of an electric company to exercise the utmost care and skill in management of its wires to prevent injury to persons whose business would necessarily bring them in contact with the wires.—Union Light, Heat & Power Co. v. Young's Adm'r, Ky., 133 S. W. 991.

69. **Embezzlement**—Elements.—In the prosecution of a township clerk for embezzlement under Crimes Act an instruction that it was not necessary that the money should have been paid to accused as township clerk held proper.—State v. Codington, N. J., 78 Atl. 743.

70. **Eminent Domain**—Compensation.—A railroad company over whose right of way a street is condemned held not entitled as compensation to the cost of its observance of police regulations made necessary by the grade crossing.—City of Paris v. Cairo, V. & C. Ry. Co., Ill., 93 N. E. 729.

71. **Equity**—Distribution of Estate.—A court of equity will not as a rule assume jurisdiction of the distribution of an estate; special circumstances being required to give it jurisdiction.—Moore v. Brandenberg, Ill., 93 N. E. 733.

72.——Master's Report.—It is error to have one master in chancery report conclusions of law and fact upon evidence taken before another.—Murphy v. Schnell, Ill., 93 N. E. 738.

73.——Mistake of Law.—The general rule that one cannot obtain affirmative relief, nor defend himself against an otherwise well-founded claim, on the bare ground of mistake of law, is relaxed where its enforcement would cause great injury.—Reggio v. Warren, Mass., 93 N. E. 805.

74. **Estoppel**—Pleadings.—A party is not estopped by allegations of law unsuccessfully made in a former suit.—Behrman v. Louisiana Ry. & Nav. Co., La., 54 So. 25.

75. **Evidence**—Admissions.—Admissions are generally regarded as somewhat unsatisfactory evidence.—Aumack v. Jackson, N. J., 78 Atl. 749.

76.——Gifts Inter Vivos.—The declarations of the donor are admissible to corroboate evidence tending to establish a gift.—Garrison v. Union Trust Co., Mich., 129 N. W. 691.

77.——Judicial Notice.—In the absence of testimony tending to prove it, the court cannot take judicial notice that general inspection of a mine as to the need for supports was necessary.—Lewis v. Detroit Vitrified Brick Co., Mich., 129 N. W. 726.

78. **Executors and Administrators**—Assets.—A policy on a husband's life taken out by him for his wife's benefit held to belong to her estate on her predeceasing him.—In re Grattan's Estate, N. J., 78 Atl. 813.

79.——Capacity to Sue.—In the absence of a statute authorizing it, an administrator cannot maintain a suit in his official capacity in a state other than that of his appointment.—Watkins v. Eaton, C. C. A., 183 Fed. 384.

80.——Mortgagor as Mortgagee's Personal Representative.—Appointment of a mortgagor as the mortgagee's executor or administrator discharges or suspends right of action on the debt since the appointee cannot sue himself.—Stewart v. Hurd, Me., 78 Atl. 838.

81.——Sale of Land.—A bill to subject land conveyed by a decedent to a creditor's lien held not defective for failure to state that the suit is brought for the benefit of other creditors than complainant.—Simpson v. Bockius, N. J., 78 Atl. 758.

82. **Exemptions**—What Constitutes.—Where a deed of trust covers exempt as well as non-exempt property, the debtor can compel the creditor to first satisfy the deed of trust out of the non-exempt property.—Hays v. Barlow, Miss., 54 So. 2.

83. **Explosives**—Blasting.—Where blasting operations cast soil or rocks on adjoining premises, the liability of the company causing the injury is absolute, irrespective of negligence or want of skill.—Longhorne v. Turman, Ky., 133 S. W. 1008.

84. **Extradition**—Power of Governor. — The Governor, on the hearing of a requisition of the governor of a sister state, held not required to try the guilt or innocence of the alleged fugitive, except so far as it may be necessary to determine whether he is a fugitive from justice of the demanding state.—Harris v. Magee, Iowa, 129 N. W. 742.

85. **Federal Courts**—Matters of Probate.—A federal court has jurisdiction of a suit by a legatee, who is a citizen of another state, against an executor to establish and enforce rights under the will.—Higgins v. Eaton, C. C. A., 183 Fed. 388.

86. **Fraud**—Accrual of Action.—An action for deceit, founded on the fraudulent representations of a vendor, inducing one to purchase worthless property, accrues as soon as the purchaser receives the deed to the property.—Trayne v. Boardman, Mass., 93 N. E. 846.

87.——Confidential Relations.—Where persons stand in a confidential relation, and one of them takes advantage of the confidence of the other, he will not be permitted to retain the advantage obtained.—Hawkes v. Lackey, Mass., 93 N. E. 828.

88. **Frauds, Statute Of**—Contracts Not to be Performed Within Year.—A contract that a sidewalk should stay in good condition for five years held not an agreement not to be performed within one year required to be in writing by Statute of Frauds.—Okin v. Selidor, N. J., 78 Atl. 770.

89.——Options.—An option to purchase, being in writing was sufficient as against the grantor to take the agreement constituted by its acceptance out of the statute, though the acceptance was not written.—Friendly v. Elwert, Or., 112 Pac. 1085.

90. **Fraudulent Conveyances**—Husband and Wife.—Where a man conveys property to his wife to defraud creditors, the husband retains no interest in the property, either in a court of law or equity.—Kjolseth v. Kjolseth, S. D., 129 N. W. 752.

91.——Weight.—The rule that a material fact may be inferred from other evidentiary facts and circumstances, and need not be proved by direct evidence, is peculiarly applicable to proving fraud.—State Bank of West Union v. Keeney, Mo., 133 S. W. 855.

92. **Gifts**—Inter Vivos.—That the donor retained custody of a gift until her death did not defeat a valid gift inter vivos.—Garrison v. Union Trust Co., Mich., 129 N. W. 691.

93. **Good Will**—Definition.—The good will of a business is the probability that old customers will resort to the old place.—Halverson v. Walker, Utah, 112 Pac. 804.

94. **Guaranty**—Who May Enforce.—A contract which guarantees the payment of notes issued under a contract held to give a discounter of a note the right of subrogation to the rights of the transferror to enforce the guaranty.—Catskill Nat. Bank v. Dumary, 126 N. Y. Sup, 1097.

95. **Homicide**—Co-conspirators.—Though accused did not take deceased's life with his own hands, he was guilty of murder, where those with whom he entered into a conspiracy to rob deceased killed the latter in carrying out the common purpose to rob him.—Reagan v. People, Colo., 112 Pac. 785.

96.——Murder.—The burden is on the commonwealth to prove the necessary facts to raise the degree of the crime of murder in the second degree to murder in the first degree.—Commonwealth v. Pacito, Pa. 78 Atl. 828.

97. **Husband and Wife**—Funeral Expenses of Wife.—A husband is primarily liable for the burial expenses of his wife, whether they were living together at the time of her death or not.—Stone v. Tyack, Mich., 129 N. W. 694.

98.——Rights of Parties.—The husband is the head of the family and may choose any reasonable place or mode of living, and his wife must conform to it while she lives with him.—State v. Beslin, Idaho, 112 Pac. 1053.

99. **Injunction**—Right to Sue.—One cannot enjoin the cutting of timber on land without showing ownership, though in actual possession.—Deaton v. Burton, Ky., 133 S. W. 958.

100. **Interest**—Compound Interest.—Compound terest should not be allowed on bonds secured by a mortgage, the interest on which is payable semi-annually.—West End Trust Co. v. Wetherill, N. J., 78 Atl. 756.

101.——Debt or Damage.—Where interest is due by agreement, it is a part of the debt and may be recovered after the debt is paid, but where it is claimed as damages for non-payment of the debt when due, it is a mere incident to the debt, and if the principal is paid and accepted without interest, no claim will lie for the interest.—Bassick Gold Mine Co. v. Beardsley, Colo., 112 Pac. 770.

102. **Judgment**—Vacating.—The trial court has no jurisdiction at a subsequent term to set aside a judgment because it was erroneous or the proceedings were irregular.—Wickliffe v. Farmers' Bank of Frankfort, Ky., 133 S. W. 966.

103. **Landlord and Tenant**—Attornment.—The legislature had power to change the common-law rule by requiring one in possession of land to attorn to the actual owner.—Sheppard v. Coeur d'Alene Lumber Co., Wash., 112 Pac. 932.

104.——Notice to Terminate Tenancy.—The notice to terminate a tenancy held waived, where the tenant disclaims the relation of landlord and tenant and attorns to another.—Meyer v. White, Okl., 112 Pac. 1005.

105. **Libel and Slander**—Privileged Communications.—A publication of a libelous matter made to persons who have no interest in the subject-matter is not privileged.—Flynn v. Boglarsky, Mich., 129 N. W. 674.

106. **Liens**—Life Estates.—A life tenant or a purchaser from a life tenant cannot assert a lien against a remainderman for inprovements.—Ratterman v. Apperson, Ky., 133 S. W. 1005.

107. **Limitation of Actions**—Scope of Statute.—The bar of limitations relating to real actions is not confined to ejectment, but applies also to a bill for partition.—Smith v. Clark, Ill., 93 N. E. 727.

108. **Mandamus**—Officers.—Mandamus will not lie to compel the governor to perform any part of his official duties.—Rice v. Draper, Mass., 93 N. E. 821.

109. **Master and Servant**—Concurrent Negligence.—Plaintiff, injured by concurrent negligence of his master and a street car in a collision, held entitled to recover against both defendants.—Coleman v. Minneapolis St. Ry. Co., Minn., 129 N. W. 762.

110.——Discharge.—An employee's refusal to perform services beyond the scope of his employment is no ground for discharge.—Loos v. Geo. Walter Brewing Co., Wis., 129 N. W. 645.

111.——Injury to Servant.—An employee who went to work on the track of a crane relying on his employer's promise that the crane would not run while he was working there, held not to assume the risk.—Foster v. B. I. Crooker Co., 126 N. Y. Sup. 1020.

112.——Notice of Defects.—A servant need not state in exact words that he apprehended danger to himself by reason of defects, nor need there be a formal notification that he will leave the service unless the defect is remedied.—Myhra v. Chicago, M. & P. S. Ry. Co., Wash., 112 Pac. 939.

113.——Safe Place to Work.—An employer's duty to furnish his workmen a reasonably safe place to work, and to use ordinary care to keep it so, held not to extend to workmen employed in removing a 10-foot bank of frozen earth.—Pern v. Wussow, Wis., 129 N. W. 622.

114. **Monopolies**—Combinations Prohibited.—To constitute a violation of Anti-Trust Act, there must be a contract, combination, or conspiracy which in purpose or effect tends to re-

strain trade or commerce among the states or to monopolize some portion thereof.—United States v. Reading Co., C. C., 183 Fed. 427.

115. **Mortgages**—Foreclosure.—A mortgagor's widow in possession during the period allowed for redemption held not required to pay rent, and entitled to rents collected during that period from her tenants.—Deisch v. Moore, Ark., 133 S. W. 1035.

116.——Sale Under First Mortgage.—A judicial sale under first mortgage extinguishes all subsequent mortgages where no surplus remains for distribution.—Heinss v. Henry La., 54 So. 24.

117.——Transfer.—A transfer of the equity of redemption by a mortgagor to the mortgagee, if properly questioned, will be carefully scrutinized to prevent oppression or fraud.—Wagner v. Phillips, N. J., 78 Atl. 806.

118. **Municipal Corporations**—Liability for Arrests Under Void Ordinances.—A city is not liable for an arrest and imprisonment under an unconstitutional ordinance prohibiting the smoking of cigarettes.—Hershberg v. City of Barbourville, Ky., 133 S. W. 985.

119. **Navigable Waters**—Effect of Colonial Charters.—The colonial charter granted to the town of Huntington, on Long Island, in 1666, does not prevent the application of the laws of the United States regulating navigation to vessels on navigable waters within the town.—The Stella B., D. C., 183 Fed. 507.

120. **Negligence**—Intervening Agency.—An intervening agency to interrupt the current of responsible connection between negligent acts and injuries must entirely supersede the original culpable act, and be in itself responsible for the injury.—Indianapolis Traction & Terminal Co. v. Springer, Ind., 93 N. E. 707.

121.——Presumption from Collapse of Wall.—Where a wall which had been constructed only about a month moved and broke, that fact raised a presumption that it was the result of negligent construction, and not an accident.—Schmidt v. J. G. Johnson Co., Wis., 129 N. W. 657.

122.——Question for Jury.—If there is any evidence of negligence on which a verdict may be found, or if the conclusion is debatable or rests in doubt, though the facts are undisputed, or the evidence is conflicting as to any material fact, the question is for the jury.—Philadelphia, B. & W. R. Co. v. Buchanan, 78 Atl. 776.

123. **Officers**—Liability on Official Bonds.—Where an officer holds two separate offices, the bond for the performance of his general duties does not cover the non-performance of the additional duties.—City of Milwaukee v. United States Fidelity & Guaranty Co., Wis., 129 N. W. Rep. 786.

124.——Suspension Pending Hearing of Charges.—A governor's power to suspend civil officers which he had power to remove on conviction of charges preferred against them will not be implied from his power to remove.—Cull v. Wheitle, Md., 78 Atl. 820.

125. **Parent and Child**—Custody of Child.—In Idaho the father has no absolute right to deprive the mother of the care and custody of an infant child simply because he is the father.—State v. Beslin, Idaho, 112 Pac. 1053.

126. **Parties**—Matters of Abatement.—The suit by only one plaintiff upon a contract made by him and others jointly is not a matter of abatement, but may be shown in bar; the joint contract made being a different contract from that sued on, so far as the parties are concerned.—Long v. Kansas City, M. & B. R. Co., Ala., 54 So. 62.

127. **Partnership**—Essentials.—To constitute a partnership, there must be a partnership contract but the partners need not call themselves such.—Bartelt v. Smith, Wis., 129 N. W. 782.

128. **Payment**—Application.—Where a debtor is indebted upon several obligations, it is his privilege to apply a payment upon any one of them.—Murphy v. Schnell, Ill., 93 N. E. 738.

129. **Physicians and Surgeons**—Malpractice.—Where an action for malpractice is essentially in tort, held it is immaterial by whom the physician was employed.—Carpenter v. Walker, Ala., 54 So. 60.

130. **Principal and Agent**—Liability of Agent of Undisclosed Principal.—Where the agent of an undisclosed principal contracted with a third person to sell land of the undisclosed principal, the agent is liable for the commission.—Sheehy v. Wollman, Mo., 133 S. W. 852.

131 **Principal and Surety**—Notice of Loss.—The requirement in a surety bond that notice of default or loss should be given "promptly and immediately" means only that it shall be given within a reasonable time after default.—Bacigalupi v. Phoenix Bldg. & Const. Co., Cal., 112 Pac. 892.

132.——Remedies of Surety.—A surety who pays a note for his principal discharges it, and can recover only on the implied contract of reimbursement.—Hays v. Housewright, Tex., 133 S. W. 922.

133. **Railroads**—Service of Process.—Where foreign railway corporations, having no lines in the state, established an agency in the state for shipment of goods over their lines, service of process on such agent is service on the constituent railroad corporations.—Archer Daniels Linseed Co. v. Blue Ridge Dispatch, Minn., 129 N. W. 765.

134. **Receivers**—Appointment.—As a rule, a party to an action will not be appointed receiver except upon the consent of all the parties, or where the circumstances make this appointment for the best interests of all parties.—Bartelt v. Smith, Wis., 129 N. W. 782.

135. **Sales**—Passing of Title.—Where a contract of sale fixed as a place of delivery on board cars at a station, the title to the property did not vest in the buyer until the goods were placed on board cars at the station.—Mears v. Daniels, Vt., 78 Atl. 737.

136. **Specific Performance**—Nature.—"Specific performance" contemplates that the party against whom such relief is sought has by his contract and covenant agreed to do some certain specific thing which the court can order.—Morey v. Terre Haute Traction & Light Co., Ind., 93 N. E. 710.

137. **Taxation**—Improvements.—Value of improvements on realty must be determined separately, but for purposes of taxation are considered a part of the realty.—La Paul v. Heywood, Minn. 129 N. W. 763.

138. **Torts**—Nature of Act.—A master may dismiss his servant or a servant may leave his master with or without reason as long as no contract intervenes.—Union Labor Hospital Ass'n v. Vance Red-Wood Lumber Co., Cal., 112 Pac. 886.

139. **Trespass**—Trees as Personal Property.—Owner of growing trees and improvements may treat them as personalty in an action of trespass.—Chudy v. Larkin, S. D., 129 N. W. 755.

140. **Trial**—Requested Instructions.—Where the law has been correctly stated in an instruction, the judge need not repeat it in the exact language requested by counsel.—Blake v. Rhode Island Co., R. I., 78 Atl. 834.

141. **Trusts**—Payment of Legacy to Trustees.—Where executors who were also trustees paid a legacy to themselves as trustees by turning over notes belonging to the estate, they thereby discharged themselves as executors, but charged themselves with liability for failure to subsequently collect the notes.—Michigan Home Missionary Society v. Corning, Mich., 129 N. W. 686.

142. **Waters and Water Courses**—Regulation of Streets.—Where a water company without right attempts to open city streets to lay its pipes, the city may either resist the invasion of its property or obtain equitable relief, preventing the invasion.—Somerville Water Co. v. Borough of Somerville N. J., 78 Atl. 793.

143. **Wills**—Election.—A will may be so framed as to put the surviving spouse to his election whether to take under the will or surrender such rights, and take what the statute grants.—In re Gray's Estate, Cal., 112 Pac. 890.

144. **Work and Labor**—Presumptions.—There is a presumption overcome by an agreement to pay therefor that services performed by a niece for an uncle are gratuitous.—Gorman v. Carr, Del., 78 Atl. 845.